

Department of Veterans Affairs (VA)
Disposition of Recommendations for Equitable Relief Submitted to the
Secretary in Calendar Year 2016

Case #1

In January 2010, VA notified the Veteran of being entitled to 36 months of full-time benefits at the 100-percent rate under the Post-9/11 GI Bill (chapter 33 of title 38, United States Code (U.S.C.)) for training at an institution of higher learning. That same month, the Veteran enrolled in a full-time masters' program at a university. A subsequent review of the Veteran's claim, following several enrollments, revealed that the Veteran received a commission based on graduation from a service academy. As a result, the Veteran had insufficient creditable Post-9/11 service to qualify for the Post-9/11 GI Bill. Based on the evidence, the Veteran's claim for Post-9/11 GI Bill benefits was denied.

The Secretary authorized equitable relief pursuant to 38 U.S.C. § 503(b), in the amount of \$7,381.00; this is the amount the Veteran would have received for the periods of training from June 2011, through June 2012, at the university had the Veteran been entitled to benefits under the Post-9/11 GI Bill.

Case #2

VA sent the Veteran a certificate of eligibility (COE) confirming he had 12 months of entitlement to the Veterans Retraining Assistance Program (VRAP) to be used before April 2014. After the Veteran entered training, VA notified the Veteran that a determination regarding the character of the Veteran's final discharge would have to be made before benefits could be approved under VRAP. VA subsequently notified the Veteran of the denial of the claim for benefits.

The Secretary authorized equitable relief pursuant to 38 U.S.C. § 503(b) in the amount of \$1,542.00; this is the amount the Veteran would have received for the training had the Veteran been eligible for VRAP.

Case #3

In December 2012, VA issued a COE to the Veteran for entitlement to 36 months of benefits at the 100-percent benefit rate payable under the Post-9/11 GI Bill. Thereafter, the Veteran enrolled for training during September 2014. During the month of September 2014, VA issued a denial letter to the Veteran indicating that the Veteran had insufficient qualifying active duty service after September 10, 2001.

The Secretary authorized equitable relief in the amount of \$3,738.90 pursuant to 38 U.S.C. § 503(b); this is the amount the Veteran would have received for the period of training during September 2014, had the Veteran been entitled to benefits under the Post-9/11 GI Bill at the 100-percent benefit level.

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Case #4

The Veterans Health Administration (VHA) requested that the Secretary of Veterans Affairs authorize equitable relief for Veterans whose applications for enrollment in VA health care were incomplete and in a pending status in the VHA's enrollment system (ES). VHA's National Enrollment Improvement team determined that, as of October 19, 2015, there were 569,217 applications for VA health care in a pending status. A subset of these applications was categorized as pending because they were missing required information. VA was required by 38 U.S.C. § 5102, to notify these Veterans about the missing information and close the applications if that information was not provided within a year. VA's contract mail vendor for these notices was not required to report to VA which letters were mailed and which letters were returned as undeliverable. Consequently, there are some Veterans whose applications should have been closed in accordance with the law, but VHA was unable to identify them.

The Secretary authorized equitable relief, pursuant to 38 U.S.C. § 503(a), to allow VHA to keep those applications open and conduct another mailing to provide written notice to each affected Veteran that the application filed was incomplete and a description of the remaining information needed to complete the application.

Case #5

In August 2013, VA received an enrollment certification for the Veteran from a college for multiple terms beginning in July 2013, and ending in February 2014. In March 2014, VA received an amended enrollment from the school, changing the end of the Veteran's final term from February to March of 2014. The amended enrollment certification could not be processed before VA's authority to pay benefits under VRAP ended on March 31, 2014.

The Secretary authorized equitable relief, pursuant to 38 U.S.C. § 503(a), in the amount of \$769.07; this is the amount the Veteran would have received if VA would have been able to process the Veteran's amended enrollment before VA's authority to pay benefits under VRAP ended.

Case #6

Since 2007, multiple policy changes by the Veterans Benefits Administration (VBA) resulted in inconsistent application of the requirement that a neurologist, psychiatrist, physiatrist, or neurosurgeon conduct initial traumatic brain injury (TBI) exams. VBA determined that the policy in effect during the relevant time period mandated that a physiatrist, psychiatrist, neurosurgeon or neurologist conduct the TBI exam performed in conjunction with a claim for service connection for TBI.

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In October 2014, VHA initiated a special review of TBI examinations completed at the Minneapolis VA Medical Center (VAMC) between 2010, and 2014, in support of disability compensation claims for TBI. As a result of that review, VHA and VBA identified 317 living Veterans examined at the Minneapolis VAMC during that period whose initial TBI exams were not conducted by an appropriate specialist as required by VBA policy.

Working collaboratively, VBA and VHA scheduled new examinations with qualified health care providers for the 317 Veterans. VBA was able to take necessary corrective action, to include awarding an effective date for service connection or an increased initial TBI evaluation from the earliest possible date, on 56 Veterans' cases. However, the law did not authorize VBA to utilize the new TBI exams to revisit final TBI decisions – those where the rating decision was issued more than one year prior and no timely notice of disagreement was filed – for the remaining 261 Veterans. Further, even if a claim to reopen was received from one of the 261 Veterans, the law did not authorize VA to assign an effective date from the date of claim associated with the initial TBI examination.

On May 3, 2016, the Secretary signed a memorandum authorizing equitable relief pursuant to § 503(a) for the 261 Veterans.

- The memorandum authorizes, for the claims of 224 Veterans whose claims for service connection for TBI were finally decided following an initial VA TBI examination conducted by an inappropriate examiner and who have since received an initial TBI examination by an appropriate examiner, readjudication of these Veterans' TBI claims as if the earlier final decisions had not been rendered. To receive this relief, a Veteran must request the same within one year of the Secretary's memorandum granting the relief.
- The memorandum authorizes, for the 37 Veterans identified whose claims for service connection for TBI were finally decided following an initial VA TBI examination conducted by an inappropriate examiner, the furnishing of a new initial VA TBI examination by an appropriate examiner. To receive this relief, a Veteran must request a new examination within one year of the date of the memorandum. If the Veteran submits a timely request and once the examination is completed, the memorandum further authorizes the readjudication of the Veteran's TBI claim as if the earlier final decision had not been rendered.

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Case #7

Since 2007, multiple policy changes by VBA resulted in inconsistent application of the requirement that a neurologist, psychiatrist, physiatrist, or neurosurgeon conduct initial TBI exams. VBA determined that the policy in effect during the relevant time period mandated that a physiatrist, psychiatrist, neurosurgeon or neurologist conduct the TBI exam performed in conjunction with a claim for service connection for TBI.

Working collaboratively, VHA and VBA completed a special, nationwide review of TBI examinations completed between 2007, and 2015, in support of disability compensation claims for TBI. As a result of that review, VHA and VBA identified 24,842 living Veterans examined during that period whose initial TBI exams were not conducted by one of the appropriate specialists.

On May 3, 2016, the Secretary authorized equitable relief pursuant to 38 U.S.C. § 503(a). This grant of relief authorized the furnishing of a new initial VA TBI examination by an appropriate examiner for the 24,842 Veterans. To receive this relief, a Veteran needed to request a new examination within one year of the date they were notified of the equitable relief granted. The Secretary further authorized that if a Veteran submitted a timely request, and once the examination is completed, the Veteran's TBI claim would be readjudicated as if the earlier final decision had not been rendered.

Case #8

In 2010, VHA rescinded the standards that established which medications State Veterans Home (SVH) Domiciliary programs needed to provide to eligible Veterans in the SVH Domiciliary program. Due to VHA's error in not replacing these standards, the applicable statutory and regulatory authorities for the SVH Domiciliary programs required the states to provide all medical services, including all medications. This resulted in an undue burden on States to pay for high-cost medications to treat Hepatitis C prescribed by VA providers that VA previously provided to them without charge.

The Secretary authorized equitable relief pursuant to 38 U.S.C. 503(a) for when VA does not provide medication to treat Hepatitis C prescribed by a VA provider because the Veteran is in a SVH Domiciliary and the drugs are not covered under existing sharing agreements. The Secretary authorized prescriptions for medications used to treat Hepatitis C to be written by VA providers following VA prescribing criteria for Hepatitis C for Veterans in the SVH Domiciliary program. Non-formulary medications, if medically necessary, would be approved through the existing VA non-formulary process.

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Case #9

In July 2014, VA issued a COE to the Veteran for entitlement to 36 months of benefits at the 100-percent benefit rate payable under the Post-9/11 GI Bill. This payment rate was based on the Veteran's active duty service from July 2003, to May 2008. In August 2014, VA received an enrollment certification for the Veteran from a university for coursework from August 2014 to December 2014 totaling 12 credits.

In August 2014, VA issued a denial letter to the Veteran indicating that the Veteran had insufficient qualifying active duty service. Active duty service does not include any period served at a service academy; this service is considered non-qualifying for Post-9/11 GI Bill purposes.

The Secretary authorized equitable relief in the amount of \$32,904.80 pursuant to 38 U.S.C. § 503(b); this is the amount the Veteran would have received for tuition, books and housing for the period of training from August 2014, to December 2014, had the Veteran been entitled to benefits under the Post-9/11 GI Bill at the 100-percent benefit level.

Case #10

In January 2014, VA erroneously determined the Veteran was entitled to Post-9/11 GI Bill benefits based on a period of service with the Army National Guard. After the Veteran entered a program of education for the term beginning in January 2014, VA notified the Veteran that the Veteran's period of service was not qualifying service for purposes of Post-9/11 GI Bill benefits and that VA, thus, could not provide benefits for the current school term. The Veteran thereafter requested equitable relief for the expenses incurred in reliance on VA's erroneous determination of entitlement.

The Secretary authorized equitable relief in the amount of \$7,876.83, pursuant to 38 U.S.C. § 503(b), for the Veteran's actual expenses for tuition, books, and housing that would have been paid by VA if its January 2014, eligibility finding had been correct.

Case #11

In 2009, VA erroneously issued the Veteran a COE for Post-9/11 GI Bill benefits. After the Veteran enrolled in a program of education in January 2015, VA notified the Veteran that the Veteran did not have qualifying service for purposes of Post-9/11 GI Bill benefits and that VA, thus, could not provide benefits for attending school. Although the Veteran served on active duty from 2003, to 2005, that service was obligated service following attendance at the United States Military Academy and is not qualifying service for Post-9/11 GI Bill benefits. The Veteran thereafter requested equitable relief for expenses incurred in reliance on VA's erroneous determination of entitlement.

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The Secretary authorized equitable relief in the amount of \$9,008.77, pursuant to 38 U.S.C. § 503(b); this is the amount the Veteran would have received for tuition, books, and housing for the training in which the Veteran enrolled in 2015, had the Veteran been entitled to benefits under the Post-9/11 GI Bill at the 70-percent benefit level.

Case #12

In 2014, VA approved a Specially Adapted Housing (SAH) grant for the Veteran. The Veteran has a permanent and total service connected disability and utilizes a wheelchair. VA erroneously approved the grant based on architectural drawings that did not meet SAH minimum property requirements. The project resulted in a 30 inch pocket door for the bathroom, rather than the 36 inch door required for SAH projects.

The Secretary authorized equitable relief in the amount of \$8,852.79 pursuant to 38 U.S.C. § 503(a); this is the cost to reverse the previous construction errors and make the Veteran's home meet minimum property requirements.

Case #13

In January 2013, the Veteran applied for benefits under the Post-9/11 GI Bill. The Department of Defense (DoD) confirmed two active duty service periods for the Veteran, one in 2009, and another from 2011, through 2012. Thereafter, VA sent the Veteran a COE stating that the Veteran was eligible to receive 50 percent of benefits payable under the Post-9/11 GI Bill program with 36 months of entitlement.

In June 2013, an enrollment certification for the Veteran was received from a college for the term beginning in August 2013, and ending in November 2013. This enrollment was processed in June 2013, paying the Veteran benefits at the 50-percent benefit level. In September 2013, an enrollment certification for the Veteran was received from a college for the term beginning in November 2013, and ending in February 2014.

In November 2013, VA sent the Veteran a letter advising that the Veteran was not eligible for benefits under the Post-9/11 GI Bill because the Veteran had insufficient qualifying service. As a result, a debt in the amount of \$1,837.50 was created for the Veteran for benefits paid for books, supplies and housing for the first term, but VA waived that debt. In December 2013, the Veteran requested to appeal the decision made by the VA to deny the Post-9/11 GI Bill benefits. Thereafter, VA confirmed with DoD that the Veteran did not, in fact, have any qualifying service for education benefits.

The Secretary authorized equitable relief in the amount of \$3,207.50 pursuant to 38 U.S.C. § 503(b); this is the amount the VA would have paid the Veteran at the 50 percent benefit level under the Post-9/11 GI Bill for the terms ending in November 2013, and February 2014, minus \$1,837.50 that was already paid.

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Case #14

In July 2013, VA issued a COE to the Veteran for entitlement to benefits at the 100-percent benefit rate payable under the Post-9/11 GI Bill. The Veteran enrolled for training from September 2013, through December 2014. In August 2014, VA sent an award letter to the Veteran correcting the benefit rate to 90-percent. In September 2014, VA sent a corrected COE indicating that, because part of the Veteran's active duty service was an obligatory period of service associated with an Reserve Officer Training Corps scholarship program it was non-qualifying service for chapter 33 benefits. As such, the Veteran was only eligible for 40 percent of the benefits payable under the chapter 33 program.

The Secretary authorized equitable relief in the amount of \$18,323.20, pursuant to 38 U.S.C. § 503(b); this amount represents the difference between what VA would have paid the Veteran for tuition, books and housing at the 100-percent benefit level and the 40-percent benefit level paid under the Post-9/11 GI Bill.

Case #15

In September 2013, the Veteran applied for educational assistance under the Post-9/11 GI Bill. At that time, the Veteran informed VA of the Veteran's participation in the DoD college loan repayment plan under 10 U.S.C. chapter 109. In October 2013, VA provided the Veteran with a COE informing the Veteran of eligibility to receive 100-percent of chapter 33 educational assistance. The Veteran subsequently enrolled in a university for a term beginning in January 2014, and ending in March 2014. In February 2014, with 9 days remaining in the term, VA notified the Veteran that the Veteran was not entitled to chapter 33 benefits because of insufficient active duty service as a result of participation in the DoD loan repayment program.

The Secretary authorized equitable relief in the amount of \$3,291.80, pursuant to 38 U.S.C. § 503(b); this is the amount the Veteran would have received for the period of education from January 2014, through March 2014, if the Veteran had been entitled to benefits under the Post-9/11 GI Bill at the 100-percent benefits level.

Case #16

In March 2014, VA issued a COE to the Veteran for 36 months of entitlement to benefits at the 100-percent benefit rate payable under the Post-9/11 GI Bill. In June 2014, VA issued a second COE to the Veteran for 36 months of entitlement at the 100-percent rate of benefits payable under the Post-9/11 GI Bill. In August 2015, VA received an enrollment certification from a university indicating the Veteran's enrollment for two

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terms, from August 2015, to October 2015, and from September 2015, to December 2015.

In September 2015, VA sent the Veteran a letter explaining that the COE was issued in error and the Veteran was not eligible to benefits under the Post-9/11 GI Bill due to insufficient qualifying active duty service after September 10, 2001.

The Secretary authorized equitable relief in the amount of \$29,230.45 pursuant to 38 U.S.C. § 503(b); this amount represents the amount VA would have paid the Veteran at the 100-percent benefit level if the Veteran had been eligible to receive benefits under the Post-9/11 GI Bill.

Case #17

Between 2001, and 2013, the VA Connecticut Healthcare System (VACHS) placed approximately 112 Veterans into three non-VA community rest homes at VA expense. VA does not have the legal authority to pay for these Veterans' residential care costs in rest homes or assisted living facilities. VA discovered the error in February 2013, and immediately stopped placing Veterans in these homes. The Secretary awarded equitable relief in 2013, 2014, and 2015, to address VA's errors.

In 2016, the Secretary authorized equitable relief for 11 Veterans pursuant to 38 U.S.C. § 503(b) for erroneous payments made by VA for residential and skilled nursing care in 2 rest homes and 1 CMS-approved skilled nursing facility. For the 10 Veterans placed in the 2 rest homes, the relief authorized continued care, not to exceed \$240,883.93, until September 30, 2016. For the Veteran placed in the CMS-approved skilled nursing facility, the relief authorized continued care, not to exceed \$48,136.00, until August 19, 2016.

Case #18

In April 2015, VA provided the student with a COE and advised the student of eligibility to receive 100-percent of the educational assistance payable under the Post-9/11 GI Bill based on creditable service by the student's Veteran-father. In July 2015, VA received an enrollment certification for the student from a college in which the student had enrolled for the Fall 2015, semester. Four days before the semester began, VA notified the student that the student's father had insufficient qualifying active duty service after September 10, 2001, and that, therefore, the student was not eligible for chapter 33 benefits.

The Secretary authorized equitable relief in the amount of \$12,255.33 pursuant to 38 U.S.C. § 503(b); this is the amount the student would have received as a dependent for

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the Fall 2015, semester if entitled to benefits under the Post-9/11 GI Bill at the 100-percent benefit level.

Case #19

In July 2015, the Veteran applied for educational assistance under the Post-9/11 GI Bill. In August 2015, VA provided the Veteran with a COE for 50-percent of the benefits payable under chapter 33 based on the Veteran's period of active duty service from 2006, to 2007. The Veteran subsequently filed a Notice of Disagreement in which the Veteran argued that the Veteran's period of Army Special Forces training from 2003, to 2005, should also be considered in determining benefits eligibility. In October of 2015, VA sent the Veteran a second COE erroneously informing the Veteran of eligibility to receive 100-percent of the benefits payable under chapter 33 based on both periods of service.

On January 12, 2016, VA received an enrollment certification from a university, indicating that the Veteran was enrolled for 12 credit hours beginning in January 2016. VA reevaluated the Veteran's claim and informed the Veteran of eligibility to receive 50 percent of the chapter 33 benefits based on active duty service from 2006, to 2007, only, not the other period previously approved because active duty for training does not constitute qualifying service for chapter 33 benefits.

The Secretary authorized equitable relief pursuant to 38 U.S.C. § 503(b) in the amount of \$11,816.40, this is the difference of payment between the 50-percent benefit level and the 100-percent benefit level.

Case #20

In July 2011, VA provided the Veteran with a COE indicating eligibility for educational assistance under the Post-9/11 GI Bill at the 100-percent benefit level. On July 17, 2013, VA received a certification of the Veteran's enrollment in a course of education for the term running from July 1, 2013, to September 8, 2013. On July 25, 2013, VA determined that it had erroneously counted a period of obligated service in determining eligibility and that, upon correction of that error, the Veteran was entitled to educational assistance only at the 40-percent benefit level. Accordingly, VA issued benefits at the 40-percent benefit level for that term.

The Secretary authorized equitable relief pursuant to 38 U.S.C. § 503(b) in the amount of \$ 5,897.80; this is the difference between payment actually issued at the 40-percent benefit level and payment at the 100-percent benefit level the Veteran anticipated receiving at the time of enrollment for that school term, based on VA's erroneous decision.

**Estimate of Cost to Prepare
Congressionally-Mandated Report**

Short Title of Report: Report to Congress on Equitable Relief Cases Granted – CY16

Report Required by: 38 U.S.C. § 503(c)

In accordance with Title 38, Chapter 1, Section 116, the statement of cost for preparing this report and a brief explanation of the methodology used in preparing the cost statement are shown below:

| | |
|--|--------------------------|
| Labor Cost: | \$5,413.72 |
| Contract(s) Cost: | \$0 |
| Other Cost: | \$0 |
| Total Estimated Cost to Prepare Report: | <u>\$5,413.72</u> |

The labor cost was calculated by projecting the salary and benefit costs of employees who worked on the report. The total hours worked was divided according to the percentage of project time spent by each employee. The salary costs associated with each employee were multiplied by the hours spent by that employee to determine the labor cost.